ESTTA Tracking number:	**ESTTA258136**
Filing date:	**12/31/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91182296
Party	Plaintiff Enrich Software Corp.
Correspondence Address	Theodore D. Lienesch Thompson Hine LLP 2000 Courthouse Plaza, NE, PO Box 8801 Dayton, OH 45401 UNITED STATES terry.posey@thompsonhine.com,tom.knoth@thompsonhine.com,ted.lienesch@thompsonhine.com,trademarks@thompsonhine.com
Submission	Motion to Compel Discovery
Filer's Name	Thomas A. Knoth
Filer's e-mail	tom.knoth@thompsonhine.com,ted.lienesch@thompsonhine.com,terry.posey@thompsonhine.com,trademarks@thompsonhine.com
Signature	/Thomas A. Knoth/
Date	12/31/2008
Attachments	Enrich Motion to Compel.pdf (51 pages)(1927063 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/152653

ENRICH SOFTWARE CORP.	)	**Opposition 91182296**
	)	
Opposer,	)	**Mark: ENRICH**
	)	
v.	)	
	)	
UCOMPASS.COM, INC.	)	
	)	
Applicant.	)	

OPPOSER'S MOTION TO COMPEL DISCOVERY

Pursuant to Rule 2.120(e) of the Trademark Rules of Practice and Rule 37(a) of the Federal Rules of Civil Procedure, Opposer Enrich Software Corporation ("Enrich") moves the Trademark Trial and Appeal Board for an Order compelling Applicant, Ucompass.com, Inc. ("Ucompass") to produce documents in response to Enrich's First Set of Requests for Production of Documents, and awarding the attorney's fees necessitated by the filing of this Motion.

A Memorandum in Support of this Motion is attached.

Respectfully submitted,

/s/ Thomas A. Knoth
Thomas A. Knoth
Theodore D. Lienesch
Terry W. Posey, Jr.
THOMPSON HINE LLP
2000 Courthouse Plaza N.E.
P.O. Box 8801
Dayton, OH 45401-8801
Telephone: (937) 443-6777
Facsimile: (937) 443-6830
E-mail: Tom.Knoth@Thompsonhine.com
            Ted.Lienesch@Thompsonhine.com
            Terry.Posey@Thompsonhine.com

Attorneys for Opposer

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/152653

ENRICH SOFTWARE CORP.	)	**Opposition 91182296**
	)	
Opposer,	)	**Mark: ENRICH**
	)	
v.	)	
	)	
UCOMPASS.COM, INC.	)	
	)	
Applicant.	)	

OPPOSER'S MEMORANDUM IN SUPPORT OF TO ITS MOTION TO COMPEL DISCOVERY

I.   FACTS

On September 5, 2008, Opposer, Enrich Software Corporation ("Enrich"), served Applicant Ucompass.com, Inc. ("Ucompass") with its First Set of Requests for Production of Documents ("Requests"). See Exhibit A.

On Thursday, October 6, 2008, Ucompass requested an additional thirty days to respond to the Requests. Enrich consented, and the Requests were due on November 5, 2008.

On November 5, 2008, Ucompass served its responses to the Requests. See Exhibit B. Of the 24 requests, there was only an unqualified refusal to produce documents as to one request.

On November 13, 2008, counsel for Enrich requested via email that Ucompass reconsider its objections and produce all of the requested documents. See Exhibit C. The email requested that Ucompass inform Enrich of the volume of documents, so that Enrich may decide whether to request Ucompass to copy the documents at Enrich's expense.

Ucompass did not respond to that email, and on December 17, 2008, Enrich renewed its request that Enrich drop the objections to production, and to inform Enrich of the volume of documents. See Exhibit D.

On the same day, Ucompass provided the attached twelve pages of documents (all from Internet websites) as the "responsive documents" and indicated that more documents may be confidential and would be produced after the entry of a protective order.[1] See Exhibits E and F.

On December 19, 2008, counsel for Enrich electronically forwarded a letter to counsel for Ucompass detailing the insufficiency of the documents produced in Response to the Requests. See Exhibit G. In particular, the following deficiencies were highlighted:

- There were no documents produced in response to Requests 4-20, or 24

- The documents themselves referenced other documents that were not produced

- No internal documents such as memoranda or correspondence were produced

The letter requested that Ucompass verify whether there were any additional responsive documents, and indicated that Enrich will be forced to file a motion to compel if additional documents were not produced.

By letter dated December 22, 2008, counsel for Ucompass responded. See Exhibit H. In the letter, Ucompass represented that it was attempting to determine if additional responsive documents exist.

On December 24, 2008, counsel for Enrich again requested a confirmation of whether Ucompass would be producing additional documents and again indicated that Enrich would need to file a motion to compel. See Exhibit I. No response has been received.

---

[1] Pursuant to 37 CFR § 2.116(g), the Trademark Trial and Appeal Board's standard protective order would be applicable to Ucompass' "confidential" documents, so Ucompass should have produced these documents subject to the standard protective order.

Based on the preceding, counsel for Enrich believes that Enrich has made a good faith effort by correspondence to resolve the issues with Ucompass, but the parties were unable to resolve their differences. See Exhibit J (statement as required by 37 CFR § 2.120).

II.   ARGUMENT

Under Rule 2.120(e) of the Trademark Rules of Practice and Fed. R. Civ. P. 37(a), when a party fails to serve a response to requests for interrogatories and documents after proper service and a certification that the movant has in good faith conferred with the party not making the disclosure in an effort to secure the disclosure, the Board may enter an order compelling the recalcitrant party to do so. In addition, the Board "shall require" the recalcitrant party to pay the attorney fees necessitated in forcing the issue. Id.

Since Ucompass served its responses to the Requests, Enrich has requested on multiple occasions that Ucompass provide information about the responsive documents. Ucompass eventually only produced twelve publicly available pages. Enrich again sought additional responsive information, and Ucompass has failed to respond.

Enrich has attempted to resolve the discovery dispute informally, but has received minimal response from Ucompass. See Exhibit J. Additionally, adequate time has now passed without production of the documents, and Applicant has given no indication when or if the remaining responsive documents will ever be produced.

Given that discovery is now set to close on January 11, 2008, Enrich is and will continue to be prejudiced by the failure of Ucompass to produce the requested discovery. In these circumstances, the Board should enter an Order compelling production of the documents requested in Opposer's First Set of Requests for Production of Documents, and requiring the payment of attorney's fees incurred in connection with this Motion.

III. CONCLUSION

For these reasons, Opposer requests the Board to enter an Order compelling Applicant to produce documents in response to Opposer's First Set of Requests for Production of Documents, and awarding the attorney fees necessitated by the filing of this Motion.

Respectfully submitted,

/s/ Thomas A. Knoth
Thomas A. Knoth
Theodore D. Lienesch
Terry W. Posey, Jr.
THOMPSON HINE LLP
2000 Courthouse Plaza N.E.
P.O. Box 8801
Dayton, OH 45401-8801
Telephone: (937) 443-6777
Facsimile: (937) 443-6830
E-mail: Tom.Knoth@Thompsonhine.com
            Ted.Lienesch@Thompsonhine.com
            Terry.Posey@Thompsonhine.com

Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Enrich Software Corp.'s Motion to Compel

Discovery has been served upon the following via electronic mail this 31st day of December,

2008:

William H. Hollimon, Esq.
bhollimon@penningtonlaw.com
PENNINGTON WILKINSON BELL & DUNBAR, P.A.
215 South Monroe Street
2nd Floor
Tallahassee, FL 32301

Attorneys for Applicant
Ucompass.com, Inc.

/s/ Thomas A. Knoth
Thomas A. Knoth

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Serial Number 77/152653
For: ENRICH

ENRICH SOFTWARE CORP.,	)))	
Opposer,	))	Opposition No. 91182296
vs.	))	
UCOMPASS.COM, INC.,	)))	
Applicant.	))))	

OPPOSER'S FIRST SET OF REQUESTS FOR DOCUMENTS AND THINGS TO APPLICANT UCOMPASS.COM, INC.

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Opposer Enrich Software Corp. hereby requests that Defendant Ucompass.com, Inc. produce for inspection and copying the following documents and other tangible things within the possession, custody or control of Applicant. These documents and things are to be delivered to Opposer's counsel at Thompson Hine LLP, 2000 Courthouse Plaza, NE, 10 W. Second Street, Dayton, Ohio 45402 (Attn: Thomas A. Knoth, Esq.), within 30 days of service.

Definitions and Instructions

1. "Ucompass," "you," "your," and "Applicant" mean Ucompass.com, Inc. and its predecessors or successors in interest and others acting or purporting to act on its behalf, including its past and present officers, directors, agents, employees, consultants.

EXHIBIT
A

2. "Enrich" and "Opposer" mean Enrich Software Co. and its predecessors or successors in interest and others acting or purporting to act on its behalf, including its past and present officers, directors, agents, employees, consultants.

3. "Application" means Applicant's U.S. Trademark Application Ser. No. 77/152653 filed April 10, 2007.

4. "Applicant's Mark" means the word mark "ENRICH" that is the subject of Applicant's Application.

5. "Applicant's Services" means the services set forth in Applicant's Application, namely, "computer service, acting as an application service provider in the field of knowledge management to host computer application software for the collection, editing, organizing, modifying, bookmarking, transmission, storage and sharing of data and information."

6. "Opposer's Registration" means Opposer's U.S. Trademark Registration No. 2,491,101 issued on September 18, 2001.

7. "Opposer's Mark" means the word mark "ENRICH" that is the subject of Opposer's Registration.

8. "Opposer's Goods and Services" means the goods and services provided by Opposer under Opposer's Mark, including software for the maintenance of equipment, namely vehicles and rolling stock; management system software, namely software for administering, tracking, monitoring and managing fixed assets, inventory, vehicles, and rolling stock, and related documentation, and such functionality to its customers from its website as an application service provider.

9. "Identify" or "the identity of," when used with respect to a natural person means to state the most current information you have concerning the name, current or last known

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residential and business addresses and telephone numbers, relationship to you, and current or last known title or occupation.

10. "Identity" or "the identity of," when used with respect to a document or thing means, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s) and recipient(s).

11. "Identify" or "the identity of," when used with respect to an entity not a natural person means to state its full name, the address of its principal place of business, and its telephone number.

12. "Person" means any natural person or business, legal or governmental entity or association.

13. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), including, without limitation, electronic or computerized data compilations. A draft or non-identical copy is a separate document within the meaning of this term.

14. "Thing" means any tangible item or object other than a Document, whether or not it is within the Opposer's possession, custody, or control.

15. All responsive documents stored in machine readable form are to be produced in hard copy form with the generation date, printout date, file name and file location appearing in the copy.

16. If any document within the scope of this request is withheld from production based on a claim of privilege or on any other basis:

(a) describe the document withheld in sufficient detail to identify it by providing the document's name, date, general subject matter, and the name of its author(s), addressee(s), recipient(s), and copyee(s);

(b) identify the grounds and reasons for withholding the information; and

(c) disclose the facts upon which plaintiff relies in asserting such a claim.

17. "Concerning" means relating to, referring to, describing, evidencing or constituting.

18. "And" and "or" are to be construed either disjunctively or conjunctively so as to bring within the scope of the request all information that might otherwise be construed to be outside the scope.

19. "Any" and "all" shall be construed to include "each" and "each and every."

20. The singular of any word shall include the plural, and the plural of any word shall include the singular.

21. If you do not clearly understand, or have any questions about, the definitions, instructions, or any interrogatory, please contact counsel for the Opposer promptly for clarification.

REQUESTS FOR PRODUCTION

REQUEST NO. 1: All documents provided to, created by or relied upon in connection with this case by any expert witness Applicant intends to call to testify in this litigation.

RESPONSE:

REQUEST NO. 2:   All professional resumes of any expert witness Applicant intends to call to testify in this litigation.

RESPONSE

REQUEST NO. 3:   All documents identified in Applicant's responses to Opposer's First Set of Interrogatories.

RESPONSE

REQUEST NO. 4:   All documents concerning Applicant's selection and adoption of Applicant's Mark, including all documents showing why, how, and when you decided to use Applicant's Mark.

RESPONSE

REQUEST NO. 5:   All documents that evidence Applicant's 1) alleged date of first use of Applicant's Mark; 2) alleged date of first use in interstate commerce; and/or 3) continuity of use of Applicant's Mark since alleged date of first use and alleged date of first use in interstate commerce.

RESPONSE

REQUEST NO. 6:   Documents sufficient to identify each product or service with which

Applicant's Mark has been used (from the first use to the present), is currently used, and/or is

intended to be used.

RESPONSE

REQUEST NO. 7:   All documents concerning your first sale of each product or service

Applicant has sold under Applicant's Mark.

RESPONSE

REQUEST NO. 8:   Documents sufficient to show annual sales (both in terms of units and

dollars) of each product or service Applicant has sold under Applicant's Mark.

RESPONSE

REQUEST NO. 9:   Documents sufficient to show the scope and nature of your advertising and

promotion of each product using Applicant's mark, including one sample of all advertising and

promotional materials in each media utilized evidencing Applicant's use of the term "ENRICH"

from the first use to the present.

RESPONSE

REQUEST NO. 10: Documents, including samples of packaging for all products and services sold under or in connection with the Applicant's Mark, sufficient to show all forms and all manners of appearance in which Applicant has used Applicant's Mark or any other mark consisting of or including the term ENRICH or a formative thereof, including but not limited to, all designs and stylizations from the first use of such mark to the present.

RESPONSE

REQUEST NO. 11: All documents pertaining to Applicant's development, marketing, promotion, advertising, and offering of products or services under the Applicant's Mark from Applicant's first use to the present, including, but not limited to, marketing plans, advertising plans, strategic business plans, and market research.

RESPONSE

REQUEST NO. 12: All documents that refer or relate to any investigations, research, reports, surveys, focus groups, studies, or opinions, including but not limited to studies, opinions or reports of advertising or marketing agencies, or polling, public relations, market research or public opinion agencies, consulted or retained by Applicant or by any person(s) acting for or on its behalf, that refer or relate to Applicant's use and/or proposed registration of the term ENRICH or any other mark consisting of or including the term ENRICH or a formative thereof,

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including but not limited to, all designs and stylizations from the first use of such mark to the present.

RESPONSE

REQUEST NO. 13: All documents concerning any investigations, research, reports, surveys, focus groups, studies, or opinions, including, but not limited to studies, opinions or reports of advertising or marketing agencies, or polling, public relations, market research or public opinion agencies, consulted or retained by Applicant or by any person(s) acting for or on its behalf that refer or relate to Opposer's use of Opposer's Mark.

RESPONSE

REQUEST NO. 14: Documents sufficient to show Applicant's annual expenditures for advertising and/or in promoting the sale of goods or services under Applicant's Proposed Mark since its alleged date of first use.

RESPONSE

REQUEST NO. 15: All documents that show use of Applicant's Proposed Mark apart from any of Applicant's other marks.

RESPONSE

REQUEST NO. 16: All documents concerning the nature, identity, or characteristics of each class or type of purchaser to whom Applicant has marketed and offered, now markets and offers, or intends to offer or market, products and services under the Applicant's Mark.

RESPONSE

REQUEST NO. 17: All documents concerning the channels of trade for each product and/or service with which Applicant's Mark is intended to be used, has been used, and/or is now used.

RESPONSE

REQUEST NO. 18: All documents concerning any instance where a person has inquired whether Applicant, Applicant's Mark, or Applicant's products or services sold using Applicant's mark are affiliated with, connected to, sponsored by, or otherwise related to Opposer and/or Opposer's Goods and Services, or otherwise evidencing instances of actual confusion between Applicant's Mark and Opposer's Mark.

RESPONSE

REQUEST NO. 19: Documents sufficient to identify Applicant's United States customers and clients, including but not limited to customer lists.

RESPONSE

REQUEST NO. 20: Documents sufficient to identify all corporate names, trade names, business names, fictitious names, and Internet domain names owned, registered, applied for, recorded, and/or used by Applicant containing the term "ENRICH" or any formatives thereof.

RESPONSE

REQUEST NO. 21: All documents concerning any and all instances where a person has complained about the quality of the products and/or services offered under Applicant's Mark from the date of first use to the present.

RESPONSE

REQUEST NO. 22: All documents constituting all versions of the web page located at http://enrich.ucompass.com, at whatever time created.
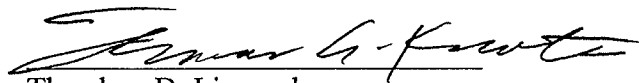
RESPONSE

REQUEST NO. 23: All documents describing the function and purpose of theApplicant's

products and/or services described at http://enrich.ucompass.com.

RESPONSE

REQUEST NO. 24: Each and every document or thing not already produced in response to

these Requests upon which Applicant intends to rely in this proceeding, including but not limited

to all documents Applicant intends to use as an exhibit in this proceeding.

RESPONSE

Respectfully submitted,

Theodore D. Lienesch
Thomas A. Knoth
Terry W. Posey, Jr.
THOMPSON HINE LLP
2000 Courthouse Plaza, N.E.
P.O. Box 8801
Dayton, OH 45401-8801
Telephone: (937) 443-6817
Facsimile: (937) 443-6635

Counsel For Opposer

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true and correct copy of the foregoing OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, to be served upon Applicant by depositing a true and correct copy of the same in the U.S. Mail, first class, postage prepaid, addressed to Applicant as follows:

William H. Hollimon
Pennington Wilkinson Bell & Dunbar, P.A.
215 S. Monroe Street
2nd Floor
Tallahassee, FL 32301

This _____ day of September, 2008.

_____
Thomas A. Knoth

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/152262

ENRICH SOFTWARE CORP.,

      Opposer,

v.

UCOMPASS.COM, INC.

      Applicant.   /

Opposition No.:   91182296

UCOMPASS.COM, INC.'S RESPONSE TO OPPOSER'S FIRST REQUEST FOR PRODUCTION

RESPONSES TO REQUESTS FOR PRODUCTION

1.   Applicant is not in possession, custody, or control of documents that are responsive to this request.

2.   Applicant is not in possession, custody, or control of documents that are responsive to this request.

3.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

4.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

5.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

6.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

7.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

8.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

EXHIBIT B

1

9.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

10.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

11.   Objection. Applicant objects to the production of marketing plans, advertising plans, strategic business plans, and market research because this information is highly confidential and proprietary and is irrelevant to this dispute. Applicant otherwise will produce responsive documents, if any, relating to Applicant's development, marketing, promotion, advertising, and offering of products or services under its Mark.

12.   Objection. Applicant objects to this request to the extent that it seeks to obtain confidential, proprietary, or attorney client privileged materials. Subject to this objection, responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

13.   Objection. Applicant objects to this request to the extent that it seeks to obtain confidential, proprietary, or attorney client privileged materials. Subject to this objection, responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

14.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

15.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

16.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

17.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

18.   Applicant is not in possession, custody, or control of documents that are responsive to this request.

19.   Objection. Applicant objects to the production of confidential and proprietary information such as customer lists.

20.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

21.   Applicant is not in possession, custody, or control of documents that are responsive to this request.

22.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

23.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

24.   Responsive documents, if any, will be produced at a mutually agreeable time and place in Tallahassee, Florida.

Respectfully submitted,

/William H. Hollimon/
William H. Hollimon
Florida Bar No. 104868
PENNINGTON MOORE WILKINSON
     BELL & DUNBAR, P.A.
215 S. Monroe Street
2nd Floor
Tallahassee FL 32301
(850) 222-3533
(850) 222-2126 (facsimile)
bhollimon@penningtonlaw.com

Attorneys for Applicant
Ucompass.com, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of UCOMPASS.COM, INC.'S RESPONSE TO OPPOSER'S FIRST REQUEST FOR PRODUCTION was served via e-mail, this 5th day of November, 2008, on:

Theodore D. Lienesch
Thompson Hine LLP
P.O. Box 8801
Dayton, OH 45401
Ted.lienesch@thompsonhine.com

/William H. Hollimon/
William H. Hollimon

Posey Jr., Terry

From:	Knoth, Tom
Sent:	Thursday, November 13, 2008 8:58 AM
To:	'Bill H. Hollimon'
Cc:	Lienesch, Ted; Posey Jr., Terry
Subject:	Enrich's Response to Requests for Admissions
Attachments:	Enrich's Response to Requests for Admissions.pdf

Bill:

Please find attached Enrich's response to your Request for Admissions. We are working on the responses to your document requests and interrogatories. We should have our responses to you by the end of November, if not sooner.

Your document requests and interrogatories seek to discover information and documents that constitute trade secrets and confidential proprietary information. We need to have a protective order in place before we can provide that information and documents. Likewise, I see that your client has objected on the same basis. You have proposed that the parties agree to the TTAB's standard protective order, which is acceptable to us. I would appreciate it if you would take the steps necessary to have the TTAB enter that protective order in our case, so both parties can produce this information and documents subject to the protective order.

In your client's responses to our discovery requests, your client made several objections and indicated that it would not be producing the requested information and documents. In an attempt to resolve this discovery dispute informally, I am requesting that your client reconsider its position and produce the requested information and documents. Please let me know as soon as you can whether it will be producing the information and documents so I can file a motion to compel if necessary.

As far as the documents that your client is producing, please let me know the amount of documents it is producing so I can decide whether just to have your client make us a copy of all the documents at our expense.

Please contact me if you have any questions.

Best regards,

Tom
Thomas A. Knoth
Thompson Hine LLP
2000 Courthouse Plaza NE
P.O. Box 8801
Dayton, Ohio 45401-8801
phone: 937.443.6777
cell: 937.344.4724
fax: 937.443.6830
Tom.Knoth@ThompsonHine.com

EXHIBIT
C

12/31/2008

Posey Jr., Terry

From: Knoth, Tom
Sent: Wednesday, December 17, 2008 10:54 AM
To: 'Bill H. Hollimon'
Cc: Lienesch, Ted; Posey Jr., Terry
Subject: Discovery in Enrich v. Ucompass

Bill:

I'm following up on the email below that I sent to you on November 13, 2008. I don't believe that you ever responded to my email.

Since it is apparent that the parties are not very close to settling this opposition action, we need to get discovery completed as soon as possible. Thus, I need you to respond to the following issues.

We are finalizing our responses to your discovery requests, but we can't respond to some of your interrogatories and document requests until we have a protective order in place because you are seeking trade secrets and confidential proprietary information. I thought you had indicated to me that you would have the standard TTAB protective order entered, but I have seen that order yet. Please advise as to the status of the protective order.

In my email below, I requested that your client reconsider the objections it made in response to our discovery requests and produce the requested information and documents. I have not heard from you regarding my request. Please let me know whether your client will be producing the requested information and documents so I can file a motion to compel if necessary.

In the email below, I also asked you to let me know the number of documents your client is producing so I can decide whether to just have all the documents copied at my expense. I have not heard from you. Please advise as soon as possible so I can get copies of the documents.

In our phone conversation on October 2, 2008, I indicated that I wanted to take the deposition of Edward Mansouri. You have not provided me with any dates for his deposition. I want to take the deposition after you have provided me with copies of your client's documents, but before the discovery cutoff of January 11, 2009. Please let me know what dates Mr. Mansouri is available for deposition and when you will be providing me with copies of your client's documents.

I look forward to your prompt response to this email. Please contact me if you have any questions.

Best regards,

Tom
Thomas A. Knoth
Thompson Hine LLP
2000 Courthouse Plaza NE
P.O. Box 8801
Dayton, Ohio 45401-8801
phone: 937.443.6777
cell: 937.344.4724
fax: 937.443.6830
Tom.Knoth@ThompsonHine.com

> **EXHIBIT**
>
> **D**

From: Knoth, Tom
Sent: Thursday, November 13, 2008 8:58 AM
To: 'Bill H. Hollimon'
Cc: Lienesch, Ted; Posey Jr., Terry
Subject: Enrich's Response to Requests for Admissions

Bill:

Please find attached Enrich's response to your Request for Admissions. We are working on the responses to your document requests and interrogatories. We should have our responses to you by the end of November, if not sooner.

Your document requests and interrogatories seek to discover information and documents that constitute trade secrets and confidential proprietary information. We need to have a protective order in place before we can provide that information and documents. Likewise, I see that your client has objected on the same basis. You have proposed that the parties agree to the TTAB's standard protective order, which is acceptable to us. I would appreciate it if you would take the steps necessary to have the TTAB enter that protective order in our case, so both parties can produce this information and documents subject to the protective order.

In your client's responses to our discovery requests, your client made several objections and indicated that it would not be producing the requested information and documents. In an attempt to resolve this discovery dispute informally, I am requesting that your client reconsider its position and produce the requested information and documents. Please let me know as soon as you can whether it will be producing the information and documents so I can file a motion to compel if necessary.

As far as the documents that your client is producing, please let me know the amount of documents it is producing so I can decide whether just to have your client make us a copy of all the documents at our expense.

Please contact me if you have any questions.

Best regards,

Tom
Thomas A. Knoth
Thompson Hine LLP
2000 Courthouse Plaza NE
P.O. Box 8801
Dayton, Ohio 45401-8801
phone: 937.443.6777
cell: 937.344.4724
fax: 937.443.6830
Tom.Knoth@ThompsonHine.com

12/31/2008

Knoth, Tom

From:	Bill H. Hollimon [bhollimon@Penningtonlawfirm.com]
Sent:	Wednesday, December 17, 2008 2:01 PM
To:	Knoth, Tom
Subject:	RE: Discovery in Enrich v. Ucompass
Attachments:	documents.produced.to.Opposer.pdf

Tom,

Let me respond to your issues:

My client served discovery on September 12, 2008, and I subsequently agreed to a 30 day extension for your client to respond. Thus, your responses were due November 12, 2008, but as that date fell on a Sunday, your responses were due November 13, 2008. I received a timely response to the Request for Admissions on November 13, 2008. I have not yet received any response to the Interrogatories or the Request for Production.

Under the federal rules of civil procedure, the failure to timely assert an objection to a discovery request waives that objection. Thus, the unasserted objections that materials requested are trade secret and/or proprietary, work product, or subject to any other privilege, have been waived and cannot (and never did) constitute a basis for you to simply not respond to Ucompass' discovery requests. Thus, I see no basis for my client to agree to the entry of a protective order with respect to your client's discovery responses.

Your discovery was served September 5, 2008, and our responses were timely made on November 5, 2008 (you also agreed to a 30 day extension). On October 6, 2008, I forwarded you a protective order for your review. Your email of November 13, 2008 indicates that the protective order that I proposed on October 6, 2008 is acceptable, and requests that I move forward with the steps necessary to have the order entered by the Board. However, I cannot move forward until you return to me a copy of the signature page executed by you and your client, which has not yet occurred.

Please let me know if you will provide a complete response to Ucompass' discovery on or before 12/20/2008, as that is the date I will otherwise move to compel.

Regarding Ucompass documents, I have attached responsive documents. There may be additional documents that are privileged and if so, will only be produced subject to your client's entry into the protective order. The attached documents are readily available on-line at enrich.ucompass.com.

As far as a deposition, please let me know how much time you need and whether you intend to conduct the deposition telephonically.

The attorney client and work product privileges are waived if not asserted with specificity in response to discovery requests. *Mosier v. American Home Patient, Inc.*, 203 F.R.D. 645, 647 (N.D. Fla. 2001). "'A party who fails to file timely objections waives all objections, including those based on privilege or work product.'" *Third Party Verification, Inc. v. SignatureLink, Inc.*, 2007 WL 1288361, *2 -3 (M.D. Fla. 2007); *quoting, Ramirez v. County of Los Angeles*, 231 F.R.D. 407, 409 (C.D. Cal. 2005)

William H. Hollimon
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
215 S. Monroe St., 2nd Floor
Tallahassee, FL 32301

850.222.3533 phone

EXHIBIT

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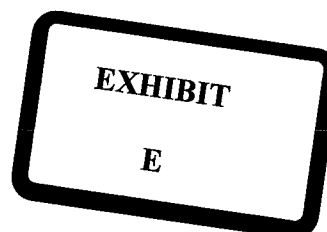
12/31/2008

850.222.2126 facsimile

www.penningtonlaw.com

From: Knoth, Tom [mailto:Tom.Knoth@thompsonhine.com]
Sent: Wednesday, December 17, 2008 10:54 AM
To: Bill H. Hollimon
Cc: Lienesch, Ted; Posey Jr., Terry
Subject: Discovery in Enrich v. Ucompass

Bill:

I'm following up on the email below that I sent to you on November 13, 2008. I don't believe that you ever responded to my email.

Since it is apparent that the parties are not very close to settling this opposition action, we need to get discovery completed as soon as possible. Thus, I need you to respond to the following issues.

We are finalizing our responses to your discovery requests, but we can't respond to some of your interrogatories and document requests until we have a protective order in place because you are seeking trade secrets and confidential proprietary information. I thought you had indicated to me that you would have the standard TTAB protective order entered, but I have seen that order yet. Please advise as to the status of the protective order.

In my email below, I requested that your client reconsider the objections it made in response to our discovery requests and produce the requested information and documents. I have not heard from you regarding my request. Please let me know whether your client will be producing the requested information and documents so I can file a motion to compel if necessary.

In the email below, I also asked you to let me know the number of documents your client is producing so I can decide whether to just have all the documents copied at my expense. I have not heard from you. Please advise as soon as possible so I can get copies of the documents.

In our phone conversation on October 2, 2008, I indicated that I wanted to take the deposition of Edward Mansouri. You have not provided me with any dates for his deposition. I want to take the deposition after you have provided me with copies of your client's documents, but before the discovery cutoff of January 11, 2009. Please let me know what dates Mr. Mansouri is available for deposition and when you will be providing me with copies of your client's documents.

I look forward to your prompt response to this email. Please contact me if you have any questions.

Best regards,

Tom
Thomas A. Knoth
Thompson Hine LLP
2000 Courthouse Plaza NE
P.O. Box 8801
Dayton, Ohio 45401-8801
phone: 937.443.6777
cell: 937.344.4724
fax: 937.443.6830
Tom.Knoth@ThompsonHine.com

12/31/2008

From: Knoth, Tom
Sent: Thursday, November 13, 2008 8:58 AM
To: 'Bill H. Hollimon'
Cc: Lienesch, Ted; Posey Jr., Terry
Subject: Enrich's Response to Requests for Admissions

Bill:

Please find attached Enrich's response to your Request for Admissions. We are working on the responses to your document requests and interrogatories. We should have our responses to you by the end of November, if not sooner.

Your document requests and interrogatories seek to discover information and documents that constitute trade secrets and confidential proprietary information. We need to have a protective order in place before we can provide that information and documents. Likewise, I see that your client has objected on the same basis. You have proposed that the parties agree to the TTAB's standard protective order, which is acceptable to us. I would appreciate it if you would take the steps necessary to have the TTAB enter that protective order in our case, so both parties can produce this information and documents subject to the protective order.

In your client's responses to our discovery requests, your client made several objections and indicated that it would not be producing the requested information and documents. In an attempt to resolve this discovery dispute informally, I am requesting that your client reconsider its position and produce the requested information and documents. Please let me know as soon as you can whether it will be producing the information and documents so I can file a motion to compel if necessary.

As far as the documents that your client is producing, please let me know the amount of documents it is producing so I can decide whether just to have your client make us a copy of all the documents at our expense.

Please contact me if you have any questions.

Best regards,

Tom
Thomas A. Knoth
Thompson Hine LLP
2000 Courthouse Plaza NE
P.O. Box 8801
Dayton, Ohio 45401-8801
phone: 937.443.6777
cell: 937.344.4724
fax: 937.443.6830
Tom.Knoth@ThompsonHine.com

Enriched

Hello!

"**Enriched**" is the new newsletter from <u>Ucompass.com, Inc.</u> to disseminate the latest developments for the **Enrich Content Enrichment System** and the **Educator Learning Management System**.

in this issue

> EXHIBIT
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- **Q&A with Ucompass.com, Inc. CEO Edward Mansouri**
- The Enrich Common Cartridge/SCORM Framework
- EnrichAV: Audio/Video services come to Enrich!
- First Full-Scale Web Community Built Entirely with Enrich
- Enrich on Schedule to Meet its Beta Deployment Goals
- First Major Enrich Contest Announced

Q&A with Ucompass.com, Inc. CEO and Enrich Chief Programmer Edward Mansouri

We caught up with Edward Mansouri to get his answers to some of our specific questions about Enrich. Click the link below for the full transcript:

<u>Edward Mansouri Q&A</u>

<u>(top)</u>

The Enrich Common Cartridge/SCORM Framework

If you have ever worked with standards-based e-learning content, you know that most common specifications, including **SCORM**, and the rapidly evolving **Common Cartridge** specification from **IMS**, prescribe that the content be moved around as zip files, also commonly referred to as "packages".

In a recent enhancement made to the **Enrich Website Publishing System**, whenever a zip file is served to an end user, if the Enrich system detects the content is a SCORM or Common Cartridge package, it will automatically play it and render it in real-time versus simply downloading the zip file as would be the commonly expected behavior.

The Enrich Content Enrichment System has been injected with its own custom made SCORM and Common Cartridge player.

Since the web-based assets contained within the packages are served from the Enrich Content Enrichment System, they will automatically be injected with Enrich's core functionality and features.

Also, we have implemented a Common Cartridge/SCORM **Public API** allowing users to deploy Common Cartridge/SCORM packages to remote webservers and then use

Enrich to display those packages to the end user seamlessly.

The implementation model couldn't be simpler. You'd simply link to:

http://enrich.ucompass.com/package.zip?url=URL-OF-PACKAGE-FILE

(top)

EnrichAV: Audio/Video services come to Enrich!

Ucompass.com, Inc. has embraced Flash and Flash-related technologies for almost as long as we've been in business. Therefore, it should be no surprise that we've decided to build around the **Flash Media Server** to fulfill all our audio/video needs in Enrich.
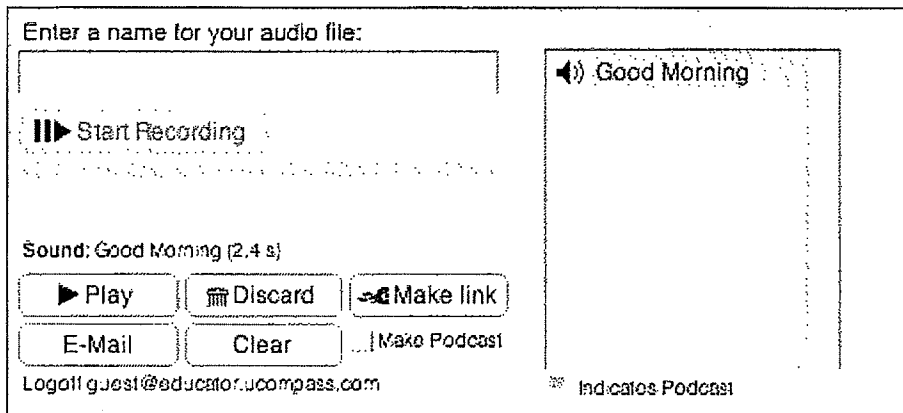
The Flash Media Server is a server-based technology that enables users to record audio/video streams from their microphone/web cameras to the server where it can then be played back later by other people. It also provides a framework for real-time text, audio, and/or video communication between multiple users.

EnrichAV provides two different models by which users can immediately leverage audio/video in their web pages:

The first involves easily embeddable AudioRecord and VideoRecord tools that enable users to record their own audio and video media that can then easily be embedded into their own web pages using a simple tag. The media can also be e-mailed to other users. See the documentation about EnrichAV at http://enrich.ucompass.com for details and instructions.

The second model enables users to upload their own streamable (FLV, MP3, MP4) media to the **Enrich Website Publishing System**. From there, it can be streamed on top of the Enrich Streaming Media Servers.

For example, if I uploaded a video that I deployed to the following URL:

http://enrich.ucompass.com/ucompass@gmail.com/MyWebSite/MyVideo.flv

I can instantly stream it at:

rtmp://pilotfish.ucompass.com/ucompass@gmail.com/MyWebsite/MyVideo.flv

Enrich's streaming servers broadcast on the traditional Flash Media Server port, 1935.

For information on using the Enrich Website Publishing System (open to anyone with an Educator, Google, or Yahoo account), see http://enrich.ucompass.com.
(top)

First Full-Scale Web Community Built Entirely With Enrich

A new, large-scale web community has been built entirely on top of the Enrich Content Enrichment System. It represents the first large scale site in public usage to be built with Enrich.

The community is called ApolloApps.com and it is an interactive online community for developers who are building applications with **Adobe**'s innovative new **Apollo** integrated runtime (Note: Apollo is the runtime that powers Ucompass.com, Inc.'s **Educator Desktop** tool).

The community had membership from 6 continents within its first 48 hours of operation and there are already almost 50 Apollo applications that users have uploaded to ApolloApps.com to share with the global community at large.

All of Enrich's core functionalities have been incorporated including **EnrichIM, EnrichAV, EnrichRSS, FunTags,** and even **EnrichGPS** which lets members see how far away they live from one another.

The site's content authors and managers are managing and building the site's content exclusively with the Enrich Website Publishing System and tracking its usage with Enrich's Administrative Content Access tools.

(top)

Enrich on Schedule to Meet its Beta Deployment Goals

The Enrich Programming Team has assembled a tremendous amount of great user feedback from all the helpful people who have participated in the Enrich Public Alpha.

They are, as we speak, incorporating those suggestions, and also, making a number of our own enhancements. Also, we are going to be doing a major code consolidation and optimization to make the functionality oF Enrich even more blazingly fast and responsive than it is now.

The current version of Enrich at the time of this writing is Enrich Public Alpha 0.42. We expect to announce the availability of the Enrich Public Beta 0.50 by the end of June.
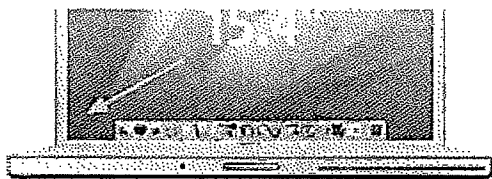
(top)

First Major Enrich Contest Announced

We are happy to announce a major giveaway from Ucompass.com, Inc.

We are giving away a **15" 2.16 GHz**

MacBook Pro, valued at over **$2,000**, to the winner of the contest.

To enter the contest, you must build a single web page that uses Enrich in the most creative way possible.

E-mail the URL of your entry to enrich@ucompass.com by June 30, 2007.

Once all the entires have been collected, we'll be setting up a site where members of the user community at large can vote for the best "Enriched" page.

The developer of the page that receives the highest vote wins the contest and the MacBook Pro.

The rules of the contest are as follows:

- Only **one** entry per person
- Employees and consultants of Ucompass.com, Inc. may **not** enter
- The entry deadline is June 30, 2007. If there are not **at least** 50 entries by June 30, 2007, we will extend the entry deadline until at least 50 entries have been submitted
- You won't be able to vote for your own entry
- You'll only be able to vote once for each entry
- Your vote will be tied to your EnrichID (e-mail address)
- Ucompass.com, Inc. is not responsible for any expenses - material or labor - encumbered upon you in entering this contest
- The prize computer will be pre-registered **in the name of the person who wins the contest** (i.e. you can't design a second page and get your friend to submit it as an entry and collect the Mac from him/her when they win!)

(top)

     email: enrich@ucompass.com   **voice: (877) 932-3382**

Welcome to the Enrich Public Alpha

Current Version: Alpha Public Release 0.49, Updated September 4, 2007

Enrich lets people work with Internet content in new and interesting ways.

What does Enrich do?

- Enrich's **Search Widget** connects words on your web pages with sites like YouTube, Flickr, Google, and your other favorite websites

- Enrich provides a **Website Publishing System**

- Enrich "**enriches**" your web pages with live information from the world's most interesting and useful websites

- NEW Enrich provides an extensible **Instant Messaging Framework** and lets you access real-time information from the world's premier websites via your IM client

- NEW Enrich provides an extensible **SMS Messaging Framework** and lets you access real-time information from the world's premier websites via your mobile phone

- NEW Enrich provides an Audio/Video framework **EnrichAV** enabling people to easily record audio and video and to stream pre-existing audio/video content

Why Enrich?

Because no matter what your web page is about, there is useful, free information elsewhere on the Internet to compliment it.

Enrich makes finding this information really easy.

Who can use Enrich?

Enrich was designed to work with Ucompass.com, Inc.'s **Educator** Learning Management System. But it can be used by **ANYONE** including:

- Users of other Open Source and Commercial Learning Management Systems

- Users of Open Source and Commercial Content Management Systems

- Website publishers and designers

- Anyone with a Google (GMail), Yahoo, or Educator e-mail address!

What does "Enrich Public Alpha" mean?

It means Enrich is ready for extensive public user testing so we can work out any existing bugs. Then Enrich will move to a "Public Beta" once we fix those bugs and add some more features. After fixing any bugs found during the Public Beta, Enrich 1.0 will be commercially available for purchase.

Can I participate in the Enrich Public Alpha?

Yes! Send an e-mail to enrich@ucompass.com to express your interest in participating. Participants will be eligible for contests, promotions, and other to-be-determined incentives. **We are particularly looking for people from institutions that already use the Ucompass.com, Inc. Educator Learning Management System.**

How can I learn more about Enrich?

ENRICH
CONTENT ENRICHMENT SYSTEM

the latest innovation from

*U*compass.com, Inc.

Enrich your web pages EASILY with*:

About	Google Video
amazon.com	IMDb
Babel Fish	MERLOT
Blogger	ODEO
flickr	Technorati
Gmail	weather.com
Google	WebMD
Google Images	WIKIPEDIA
Google Maps	Y! Keywords
Google News	You Tube
	ZAP2it
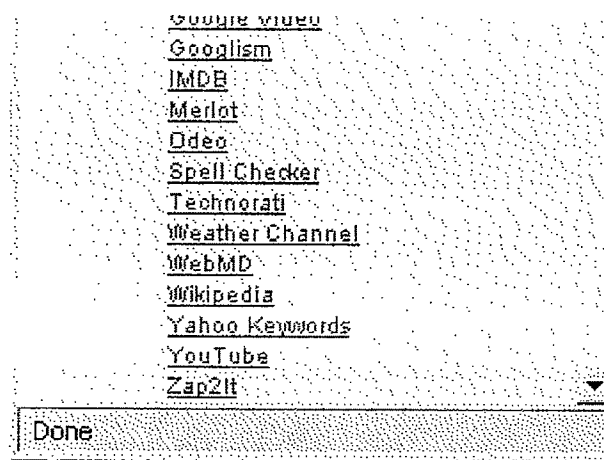
* None of the companies whose logos are displayed above have endorsed or approved the use of their logos at this time. Integration between Enrich and the sources of information provided by the above companies occurs through freely available, unrestricted means.

This site is the most current documentation we have for Enrich. Read any of the links at left to get a feel for what Enrich is all about. There are also numerous audio-enhanced tutorials.

Further, visit the Enrich Forum, where Enrich experts from Ucompass.com, Inc. are available to answer your questions and provide more information.

© 2007, Ucompass.com, Inc. This documentation built with Enrich!

What is Enrich?

Enrich is the flagship Content Enrichment System offered by Ucompass.com, Inc.

© 2007, Ucompass.com, Inc. This documentation built with Enrich!

Enrich Timeline

August 2006: Coding begins on the PilotFish Search Feature

September 2006: 20 Search Features including Google, Flickr, and YouTube are added to the PilotFish Search Feature

October 2006: API is built enabling the PilotFish Search Feature to be deployed into the Ucompass.com, Inc. Educator Learning Management System

November 2006: FTP Architecture with Google and Educator authentication patterns is introduced

December 2006: The name PilotFish is replaced with **Enrich**

January 2007: Enrich Content Enrichment System begins its Private Alpha 0.1. A month long browser compatability refinement and analysis beginning the 1st of the month

February 2007: Monday, February 19, 2007, Enrich Content Enrichment System Public Alpha 0.3 is released for usage to Ucompass.com, Inc.'s Educator Learning Management System clients at Version Alpha 0.1

November 2007: Anticipated release of Enrich Content Enrichment System Version Beta 0.5

January 2008: Anticipated release of Enrich Content Enrichment System 1.0

Enrich Documentation - Mozilla Firefox

File   Edit   View   History   Bookmarks   Tools   Help

http://enrich.ucompass.com/emansouri@ucompass.com/d

Welcome to the Enrich

Current Version: Alpha Public Release 0.49,

Enrich lets people work with Internet content i

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  access real-time information from the
  mobile phone

- **NEW** Enrich provides an Audio/Video f
  easily record audio and video and to s

Why Enrich?

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Public Alpha

Updated September 4, 2007

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Google Video
Googlism
IMDB
Merlot
Odeo
Spell Checker
Technorati
Weather Channel
WebMD
Wikipedia
Yahoo Keywords
YouTube
Zap2It

Because no matter what your web page is ab
elsewhere on the Internet to compliment it.

Enrich makes finding this information really e

Who can use Enrich?

Enrich was designed to work with Ucompass
Management System. But it can be used by **A**

- Users of other Open Source and Com

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mercial Learning Management Systems

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THOMPSON HINE

December 19, 2008

VIA E-MAIL AND
REGULAR MAIL

William H. Hollimon, Esq.
Pennington Moore Wilkinson Bell & Dunbar, P.A.
215 S. Monroe Street, 2nd Floor
Tallahassee, FL 32301

RE: Enrich Software Corp. v. Ucompass.com, Inc.
       Opposition No. 91182296

Dear Bill:

Please find enclosed Enrich Software's Responses to Ucompass.com's interrogatories and document requests. As you will see, we have objected to producing some of the documents based upon the fact that the documents constitute trade secrets and/or confidential proprietary information. We will produce those documents once the Board has entered a protective order. I am also enclosing the TTAB's standard protective order signed by me. In October 2008, you indicated that your client was willing to enter into the standard TTAB protective order.

I am confused by your e-mail dated December 17, 2008, as to whether you are still willing to enter into the standard TTAB protective order. As I indicated above, in October, you indicated that you were, and in fact sent me a copy of the standard TTAB protective order. In November, I sent you an e-mail indicating that my client was willing to enter into the standard TTAB protective order, and asked you to proceed to take the steps necessary to have the order entered by the TTAB. In your October e-mail, you indicated that you would take those steps, but for some reason you have not done so since my November e-mail. Your e-mail of December 17, 2008 appears to take contradictory positions, at one point indicating that you see no basis for why your client should agree to the entry of a protective order, while at the same time indicating that I should return a copy of the signature page for the protective order.

Enrich Software will not be producing any trade secrets or confidential proprietary information until there is an enforceable protective order in place. The TTAB's letter dated February 6, 2008 states that "[t]he Board's Standard Protective Order is applicable to this case ...," so perhaps

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Tom.Knoth@ThompsonHine.com   Phone: 937.443.6777 Fax: 937.443-6830   mjw 555392.1

THOMPSON HINE LLP	2000 Courthouse Plaza, N.E.	www.ThompsonHine.com	EXHIBIT
ATTORNEYS AT LAW	P.O. Box 8801	Phone 937.443.6600	
	Dayton, Ohio 45401-8801	Fax 937.443.6635	G

THOMPSON HINE

there is no need to have the Board enter the standard TTAB protective order now. However, your e-mail seems to suggest that you do not believe that a protective order is in place currently. Because we cannot produce trade secrets or confidential proprietary information if you are not willing to abide by the standard TTAB protective order, we will need to have the standard protective order entered by the Board before we can produce those documents. Thus, I would appreciate it if you would sign the standard protective order and submit it to the Board for its approval. Once that is done, we can produce the trade secret and confidential proprietary information, including the summaries referenced in the responses.

So far, we have compiled one or two boxes of responsive documents. Please let me know if you want to come to Dayton, Ohio to review those documents, or whether you want me to have those documents marked and copied at your expense.

In response to our document requests, you attached to your December 17, 2008 e-mail just 12 pages of documents. The documents that you have produced are woefully inadequate. It does not appear that you have produced documents in response to Request Nos. 4-20, and 24. At best, you only produced documents pertaining to Request Nos. 22 and 23, and even those documents are incomplete. For example, you obviously did not produce all of Applicant's webpages; looking at the documents you did produce shows that there are additional links for which no documents have been produced. The website also references an "Enrich Forum," for which you have not produced any documents. In addition, you have not produced any internal documents at all (such as notes, e-mails, marketing plans, developmental documents, etc.) or correspondence or e-mails with persons outside the company.

Please let me know by December 23, if there are any additional responsive documents and whether you will be producing them immediately. If I do not hear from you by then, I will be forced to file a motion to compel.

Regarding the deposition of Edward Mansouri, I would imagine that the deposition should last about four hours. I have not decided yet whether I will take the deposition in person or by telephone or video conferencing, but I should be able to let you know that some time next week. I do not think whether I take it in person or by telephone or video conferencing should affect the date of the deposition in any way. Please let me know by December 23, 2008, what dates Mr. Mansouri and you are available for deposition before January 11, 2009.

Please do not hesitate to call me if you have any questions.

Sincerely yours,

Thomas A. Knoth

TAK/cem
Enclosures
c: Theodore D. Lienesch, Esq.
        Terry W. Posey, Jr., Esq.

Pennington
Moore
Wilkinson
Bell &
Dunbar P.A.
ATTORNEYS AT LAW
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William H. (Bill) Hollimon
Attorney at Law

(850) 222-3533
bhollimon@penningtonlaw.com

VIA EMAIL & U.S. MAIL

December 22, 2008

Thomas A. Knoth
Thompson Hine
PO Box 8801
Dayton, OH 45401-8801

> **EXHIBIT**
> **H**

RE: Enrich Software Corp. v. Ucompass.com, Inc, Opposition No.: 91182296

Dear Tom:

I received your discovery responses (responses to Interrogatories and Request for Production) that you served by email on December 19, 2008. However, as indicated in my December 17, 2008, email, these responses were due no later than November 13, 2008. Thus, because these responses are untimely, all objections to my client's discovery have been waived. Thus, there is no basis for you to refuse to produce documents even if you now assert that some responsive documents are confidential, proprietary, or subject to some privilege.

You indicate that you are confused regarding my December 17, 2008, email as it relates to my client's entry into the TTAB's standard protective order. Let me be perfectly clear. Because your client has waived its right to object to Ucompass' discovery requests, it has waived its right to demand that a protective order be in place prior to producing responsive documents. Ucompass, on the other hand, served timely objections to your client's discovery requests, and maintains the right to demand that a protective order be in place prior to its production of responsive confidential and/or proprietary documents, to the extent such documents exist. The reference in my email regarding the return of the signature page was related to my ability to act in November – not to a present indication that your client is entitled to the entry of a protected order. Further, even if the Board has already adopted its standard protective order, your client's failure to timely assert objections moots this issue.

I am working to ascertain if additional, responsive documents exist. If such documents are found, they will be produced. Mr. Mansouri is available for deposition on January 6 or 7, 2009. I would appreciate as much advance notice as possible for scheduling this deposition.

215 South Monroe St., 2nd Floor (32301)   •   P.O. Box 10095   •   Tallahassee, FL 32302-2095   •   (850) 222-3533   •   (850) 222-2126 fax

TALLAHASSEE   TAMPA   CLEARWATER

Finally, I understand from your letter that, notwithstanding your client's untimely discovery responses, your client refuses to produce documents or answer interrogatories that it believes would require disclosure of confidential, proprietary, or trade secret information, unless such disclosure is pursuant to a protective order. Please confirm that this is your position so that I can make the proper representations in any motion to compel.

Sincerely,

William H. Hollimon

cc: Edward Mansouri (by email only)

THOMPSON HINE

December 24, 2008

***VIA E-MAIL AND
REGULAR MAIL***

William H. Hollimon, Esq.
Pennington Moore Wilkinson Bell & Dunbar, P.A.
215 S. Monroe Street, 2nd Floor
Tallahassee, FL 32301

RE: Enrich Software Corp. v. Ucompass.com, Inc.
Opposition No. 91182296

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**EXHIBIT
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Dear Bill:

I received your letter dated December 22, 2008. Your position regarding our alleged waiver of objections relating to privileges or protection of confidential proprietary information, and your position regarding the applicability of the standard protective order, are both wrong as a matter of law for several reasons.

First, the TTAB has held in a number of cases that "[t]he Board generally is not inclined to hold a party to have waived the right to make the claims [that information sought by a discovery request is trade secret, business-sensitive or otherwise confidential, is subject to attorney-client or a like privilege, or comprises attorney work product], even where the party is otherwise held to have waived its right to make objections to the merits of discovery requests . . .." *See, e.g., No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551 (TTAB 2000). The cases you cited in a prior email do not involve the TTAB and have no application in this case. Thus, the entire basis for your argument that Enrich Software has somehow waived its right to assert that documents are privileged or subject to protection as trade secrets or confidential proprietary information is simply wrong.

A second reason why your position is wrong is that you and your client had previously agreed to have the Board enter the TTAB's standard protective order. Your current position—that that you and your client are unwilling to respect the terms of the standard protective order as it would relate to Enrich Software's documents—is therefore rather surprising. In your two emails on October 6, 2008, you state that you are willing to enter into the standard protective order and that you would take steps to ensure that the Board enters the standard order. In one email, you state that your "client will also agree . . . to entry of the TTAB standard protective order." In the other e-mail that day, you indicate that if I do not have any problems with the standard protective order, you "will start collecting signatures." In my email to you on November 13, 2008, I

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ATTORNEYS AT LAW   P.O. Box 8801   Phone 937.443.6600
                       Dayton, Ohio 45401-8801   Fax 937.443.6635

requested that you take whatever actions were appropriate to have the standard protective order entered, as you promised that you would do in your two emails to me on October 6, 2008. Of course, these emails about entry of a protective order were after our phone call in which I told you that my client is unwilling to produce information and documents containing trade secrets or confidential proprietary information until a protective order is in place, and you were agreeable to that. Given the phone call and these emails, your change in position is rather remarkable.

Third, your new position is plainly wrong, since 37 C.F.R. §2.116(g) provides that the standard protective order is applicable to Enrich Software's interrogatory responses and documents.

As I have indicated all along, Enrich Software is willing to produce the information and documents containing trade secrets and/or confidential proprietary information subject to the standard protective order. If you indicate in writing that you and your client will respect the terms of the standard protective order and the designations that Enrich Software places on those documents, then Enrich Software will produce the confidential information and documents.

So far, even though I have indicated to you that Enrich Software is ready to produce responsive documents (including those that would not be subject to the protective order), you have not taken any steps to either set up a time to review those documents here in Dayton or request that I copy the documents at your expense and send those documents to you. As to the non-confidential documents, once you indicate to me that you want us to produce the documents either in Dayton or by copying and sending them to you, I will begin the process of bates-labeling and copying the responsive documents. I also will start bates-labeling and marking the confidential documents that are subject to the protective order after you indicate to me in writing that you and your client will respect the TTAB's standard protective order and the designations that Enrich Software places on those documents.

As you know, the TTAB rules require the parties to cooperate in discovery and in resolving any discovery disputes. I do not believe your unilateral change in position regarding the entering of a standard protective order is a sign of cooperation, nor is your unwillingness to respect the federal regulation providing that the TTAB's standard protective order is applicable to discovery in this case. Further, given the TTAB's well-established position regarding the lack of a waiver of privilege and the treatment of confidential proprietary information, the position in your letter is another indication that you are not cooperating in discovery.

I trust that this letter sets forth our position with sufficient clarity. If you are still uncertain as to our position, please do not hesitate to call me.

Now that I have addressed the points asserted in your letter, I want to discuss your client's failure to comply with our document requests. As you know, since at least as early as my email dated
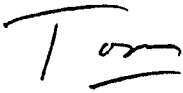
THOMPSON HINE

November 13, 2008, I have been asking you to let me know what responsive documents your client is producing so we can have the responsive documents copied. So far, your client only has produced twelve pages of documents in response to our document requests. It is hard to believe that your client has produced all responsive documents. As I indicated in more detail in my letter dated December 19, 2008, it does not appear that your client has produced any documents in response to Request Nos. 4-20 and 24, nor has it produced any internal documents at all (such as notes, emails, marketing plans, developmental documents, etc.), or correspondence or emails with persons outside the company.

In my December 19, 2008 letter, I requested that you let me know by December 23, 2008, whether your client has any additional responsive documents and whether it will be producing them immediately. So far, I have not heard from you at all regarding the existence of any additional responsive documents, nor have any additional responsive documents been produced.

As you know, a party is required to determine what responsive documents it has before it responds to a document request. Your client's inability or unwillingness to disclose whether there are any additional responsive documents, when there must be additional documents to produce, indicates that either your client responded to the document requests without making a good-faith effort to determine what documents are responsive, or else is simply refusing to comply with the document requests by producing responsive documents.

Since I did not hear from you by December 23, 2008, I assume then I will have to file a motion to compel the production of those documents. Please let me know immediately whether Ucompass.com will be producing any additional responsive documents.

Sincerely yours,

Thomas A. Knoth

TAK/cem
c: Theodore D. Lienesch, Esq.
        Terry W. Posey, Jr., Esq.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77/152653

ENRICH SOFTWARE CORP.	)	**Opposition 91182296**
	)	
Opposer,	)	**Mark: ENRICH**
	)	
v.	)	
	)	
UCOMPASS.COM, INC.	)	
	)	
Applicant.	)	

37 CFR § 2.120(E) STATEMENT IN SUPPORT OF ENRICH SOFTWARE CORPORATION'S MOTION TO COMPEL

I am one of the counsel in this action for Enrich Software Corporation. The following statements are made upon my personal knowledge and belief:

(1)   I have made a good faith effort to resolve the discovery dispute at issue in the present Motion to Compel.

(2)   The correspondence attached to the Motion to Compel details my attempts to resolve the discovery dispute through correspondence.

(3)   Despite the efforts to resolve the discovery dispute through correspondence, the parties were unable to resolve their differences. Applicant Ucompass.com, Inc. has only produced twelve pages of publicly-available documents, and despite my repeated requests, Applicant's counsel has failed to state whether other responsive documents exist and to produce those documents. The discovery cutoff in this case is January 11, 2009.

Respectfully submitted,

/s/ Thomas A. Knoth
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